Sexual Assault Prevention and Response Program

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SEXUAL ASSAULT PREVENTION & RESPONSE

CPT Traci Winston
NGB - JA

SEXUAL ASSAULT (SA) UPDATE MAIN POINTS

Background

New DOD Focus

- Problems, Rules

NGB Policy

Future Challenges & Issues

SA UPDATE - BACKGROUND

- 1982 Victim & Witness Protection Act
- 1990 V's Rights & Restitution Act
- DoD Dir 1030.1, *V & W Assistance*

AFI 51-201, *Law, Administration of Military Justice* (Chap 7, V & W Assist.),

AR 27-10, *Legal Services, Military Justice*

(Chap 18, V/W Assist.)

USAF Academy - SA cases – 2003

SA UPDATE – BACKGROUND

Nov 03, FY04 NDAA Section 576 requires DoD to examine SA policies for military service academies and DTFSH&V is established.

Feb 04 DoD Care for Victims of Sexual Assault Task Force is established to conduct 90 day study which was published in Apr 04

Joint Task Force Sexual Assault Prevention & Response (JTF SAPR)

SA UPDATE – BACKGROUND

From Nov 04-June 05 Dr Chu, DoD USD P&R signed 14 “Directive-Type Memorandums” (DTMs)

Oct 05 DODD 6495.01 published

March 16, 2005 Dep SECDEF Memo – confidentiality policy for Victims of Sexual Assault JTF-SAPR-009

June 06 DODI 6495.02 published superseding and canceling DTMs

Core Policy Areas

DoD's sexual assault prevention and response policies are applicable to the military services and focuses on 3 core areas:

- **Victim care**
- **Prevention and training**
- **Accountability**

Sexual Assault

Intentional sexual contact with use of force, physical threat, abuse of authority, or when victim does not or cannot consent.

- **"Consent" is not "failure to offer physical resistance." Consent is not given when a person uses force, threat of force, coercion, or if victim is asleep, incapacitated or unconscious.**
- **A crime, such as rape, nonconsensual sodomy (oral & anal sex), indecent assault, or**

USAF, DOD, & ARMY RULES

- **DoDD 6495.01, SAPR Program, 6 Oct 05**
- **DoDI 6495.02, SAPR Procedures, 25 Jun 06**
- **AR 600-20, Army Command Policy, Chapter 8, SAPR Program, 1 Feb 06**
- **USAF Policies for Prevention of & Response to SA, 8 Jun 05**

DOD DIRECTIVE 6495.01

- **Rules apply to NG members who are on active and inactive duty status (para 2.2)**
- **Active Duty Focus**
- **No procedures or funding for NG cases**
- **No discussion of state criminal immunity**

DOD INSTRUCTION 6495.02

- **Program Requirements & Responsibilities**
- **Active Duty Focus**
- **No procedures or funding for NG cases**
- **No discussion of state criminal immunity**

ARMY REGULATION 600-20

- CNGB will develop, implement, and monitor SAPR program within the NG.
  - **Establish policy to comply with the policy on confidentiality**
  - **First responders**
  - **Staff positions and resources – no funding source**
  - **SAPR training at large and SARC and UVA training**
  - **Deployed environments**
  - **Pre-mobilization, mobilization, and post-mobilization**
  - **SA data into SADMS**

USAF POLICY – 28 Mar 08

The Director of the Air National Guard (NGB/CF) develops a specific SAPR program

- **Military personnel defined**
- **Restricted reporting does not include Guard members performing in T32**
- **The role of the SARC in ensuring continuity of care and case management**

What is your status?

- SARCs and UVAs need to understand status to understand the options available to victims.
- This should be one of your first questions.

Active Duty Personnel

- Active Duty personnel include those persons that are serving in a Title 10, Title 32 AGR, Title 32 ADSW for more then 30 days, or as Title 32 technicians when they become victims of a sexual assault.
- AD personnel have two options
  - Restricted reporting
  - Unrestricted reporting

Restricted Reporting

The victim of a sexual assault may report, on a confidential basis, the details of their assault to specifically identified individuals to receive medical treatment and counseling without triggering official investigation process.

Identified individuals include:

- **Healthcare providers (HCP)**
- **Sexual Assault Response Coordinator (SARC)**
- **Victim advocates**

Restricted Reporting

- Upon receiving report of sexual assault, SARC will immediately assign a VA
- The VA will provide information on restricted vs. unrestricted
- Victim will acknowledge options in writing VA will report to SARC
- HCP, with victim consent, will conduct SAFE or refer victim to civilian provider
- Within 24 hours SARC will inform the Senior Commander that an assault has occurred, and provide the Commander with non-identifying personal information/details related to the sexual assault allegation (rank; gender; age; race; service; date; time and/or location).

Restricted Reporting

Disclosure will be limited to information necessary to satisfy the purpose of the disclosure.

Information is disclosed in a manner that preserves the victim's anonymity.

Careful consideration of which details to include is of particular significance at installations or other locations where there are a limited number of minority females or female officers assigned.

Further disclosure will not be made

Exceptions to confidentiality requirement

Command or law enforcement:

- **Written Authorization**
- **To prevent or lessen serious and imminent threat to health and safety of victim or others**

Disability retirement boards:

- **Limited information only**

–SARC, HCP, or VA:

- **To coordinate supervision and direct victim services or treatment**

Military or civilian courts:

- **When ordered by Fed or State statute or international agreement**

Un-restricted Reporting

Process service members use to disclose, without confidentiality or restricted reporting, a sexual assault. The report will trigger medical treatment, counseling and an may lead to an official investigation.

Report can be made to health care provider, SARC, VA, command authorities or other persons reportable to law enforcement.

SA UPDATE - NGB POLICY

NGB-J1 Memos

15 Jun 05 – Commander's Checklist for Responding to Allegations of SA (2 pages, with 3 page checklist)

15 Jun 05 – SA Victim Services Resource Guide (2 pages, with sample 2 page handout)

19 Jul 05 – State SA and Response Coordinator (2 pages)

Military Status other than Active Duty

- Military Status other then Active Duty include those in Title 32 status (not listed in AD) or those called upon for State Active Duty (SAD)
- Generally victims of a sexual assault are have two options
  - **Limited Reporting**
  - **Un-restricted Reporting**
- Victims can receive confidential counseling from chaplain
- Victim's options are dictated by State Law.

Limited Reporting System

- Victims that report to the SARC or UVA can be confidentially referred to civilian resources
- Medical benefits are not provided under TRICARE but states may have separate medical assistance for members serving in SAD status
- SARCs are tasked with developing a confidential limited system in accordance with local laws, rules, and procedures
- SARCs & UVAs must know laws, rules, regs & processes for their areas!

SA UPDATE - THE FUTURE

- NGB's SA Working Group (SAWG) created Mar 05. Reviewing Army, USAF, DoD & DOJ materials for use in NGB SA programs.

- Full-time NGB SA Response Coordinator (SARC) hired Apr 05, currently Ms Jane Lux.

- NGB's SAWG and NGB SARC working on training and implementation issues.

SA UPDATE - THE FUTURE

A SARC found for each state & terr. to implement DoD & NGB guidance and create local programs.

- **Programs must consider local laws, conditions, & resources for victims.**
- **Programs will implement SAPR Program, with victim support, better case accounting, training, better responses to allegations, coordination with local agencies, & improved response capability.**
- **Programs must work “hand-offs” from unit to unit**

SA UPDATE - THE FUTURE

SA Response Board (SARB): Each SARC needs Commanders, Law Enforcement, Chaplains, Public Affairs, JA, Medical & others to build the best program possible.

– **Expect more guidance from DoD, Services & NGB, but local people will work with victims. Thorough local plans are essential.**

WHY DOESN'T NG HAVE RESTRICTED REPORTING?

Medical Access

Size and location of installation

Command control

Availability of resources

Applicable laws

Law enforcement

SA UPDATE

- CRISIS -- How can the NG have a SAPR Program without Restricted Reporting?
- - Focus on training
- - Referrals to civilian resources
- - Work hand off cases

SA – ANG & ARNG POLICY

Chief, NGB, All States Memo on SA Policy, 12 Jun 06

- -Training
- -Staffing
- -Limited Reporting System
- -State and Local Programs
- -Victim Privacy
- -Sexual Assault Review Board

SA UPDATE - NGB POLICY

States can create their own Limited Reporting Programs,

based on state & local laws, rules, benefits & procedures

SARC/VA RESPONSIBILITIES

What must SARC & VA tell Commanders?

Info on incidents, without victim ID, within 24 hours. Info to help prevent SA.

Must track services to victim & report. Report process not defined yet.

SARC/VA RESPONSIBILITIES

Do SARCs and VAs have to create entire unit programs themselves?

Avoid duplication of effort. What have your local & state Active Duty units already accomplished? Can you build on the MOUs, materials, procedures or expertise they have already developed?

What have other services done? Are there “best practices” you can consider & build on?

SARC/VA GOALS

Be informed

-Learn state & local rules

-Learn the licensing requirements

Be proactive

-Identify local counseling services

-Identify rape crisis centers, women's shelters

-Understand the benefits available by community resources

-Understand how victims can apply for aid, grants or compensation

SA UPDATE - LEGAL ISSUES

Are there “Rape Shield” laws in your area ?

- What are a victim’s rights in local courts?
- Do the local courts have victims advocates?
- Will a victim’s name & identity be protected in local courts?
- Will their name & identity be in the local press?

SA UPDATE - LEGAL ISSUES

When a SARC/UVA aids a victim, the help must include info about any local mandatory reporting laws.

Work with your SARB to get the info before the first victim needs help! Role Play Cases!

SA UPDATE - LEGAL ISSUES

What about mandatory reporting laws?

- **Each SARC & UVA must learn if there are local laws or rules that require crime reporting. Check laws, rules and processes for professions. (IE - Medical personnel must report suspected child abuse or any gunshot wounds.)**
- **Talk with your JA and SARB!**

SA UPDATE - LEGAL ISSUES

If a victim goes to a civilian doctor in your town, is the doctor required by law, rules or habit to report it?

Will the doctor do a forensic exam? Who pays? How?

SA UPDATE - LEGAL ISSUES

If a victim uses a shelter or applies for a victim assistance grant, must they report a crime?

LAWS THAT MANDATE RAPE REPORTING

- California is the only state that explicitly requires medical personnel to report their treatment of a competent adult rape victim. A report must be made to the local law enforcement agency.
- In Kentucky, spousal rape must be reported to the Kentucky Cabinet for Health and Family Services.
- Massachusetts requires medical personnel to report to the Criminal History Systems Board and to the police that they have treated a rape victim; however, the report cannot include the victim's name, address or any other identifying information.

LAWS THAT MANDATE REPORTING OF NON-ACCIDENTAL/INTENTIONAL INJURIES

- **In certain states, medical personnel are required to report non-accidental or intentional injuries. If a patient has suffered a non-accidental or intentional injury in addition to the rape, the injury will generally have to be reported.**
- **The question which arises in these states is whether a rape must be reported when the patient has suffered no injury other than the rape itself.**

LAWS THAT REQUIRE REPORTING OF INJURIES CAUSED BY CRIMINAL CONDUCT

- **In certain states, medical personnel are required to report injuries caused by criminal conduct. If a patient has suffered an injury in addition to the rape as a result of the criminal conduct, the injury will generally have to be reported.**
- **Again, the question which arises in these states is whether a rape must be reported when the patient has suffered no injury other than the rape itself.**

LAWS RELATING TO OTHER CRIMES OR INJURIES WHICH MAY IMPACT RAPE VICTIMS

- **Some states require certain types of injuries to be reported by medical personnel to law enforcement. If a rape victim presents with any of these injuries, medical personnel will be required to report the injury to law enforcement.**
- **These injuries may include injuries caused by firearms, stab wounds or non-accidental wounds caused by a knife or sharp pointed instrument, injuries caused with a deadly weapon and burns, among others.**

CRIME VICTIMS COMPENSATION ACT

- Criminals pay into this federal pot of money
- Dissemination of money occurs at state level
- Money is to be used by victims to pay for expenses as a result of crime – medical, funeral etc.
- Current policy requires cooperation with the police to file a claim under this act but that is being challenged

SA UPDATE - LEGAL ISSUES

Will a SARC or UVA be called to testify or provide records in a trial or court-martial?

It depends... Check with your JA!

SA UPDATE - LEGAL ISSUES

GENERAL ANSWER - In trials, the govt. must prove a crime & defense seeks proof of innocence, extenuation or mitigation. The court must insure a fair trial. Because of our legal system, judges may seek evidence or witnesses required for a fair trial.

SA UPDATE - LEGAL ISSUES

What if a victim is called to testify?

Please check with victim's rights groups, the court, case attorneys & your JA for any victim's rights or victim's advocates. It may be best to send a proper escort with the victim to the trial.

Check with your JA!

SA UPDATE - LEGAL ISSUES

What about Collateral Misconduct rules?

Defer discipline for victim's misconduct until end of SA case & avoid traumatizing the victim.

See DODI 6495.02, Enclosure 3 and Commanders Checklist at Enclosure 5,

USAF Policy, para 10, and AR 600-20, para 8-5o(24).

SA UPDATE - FUTURE

New Issues...

Privacy in reporting...

LODs...

Operation JUMP START...

SA – REFERENCES

- National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2004, Sections 526-527
- NDAA for FY 05, Sections 576-577
- DoDD 6495.01, DODI 6495.02
- USAF Policy, 08 June 2005
- AR 600-20, Chapter 8

SA UPDATE – PRACTICAL CONCERNS

Program must prevent & heal SA. It must work well for members & employees in Title 10 & 32 Status. It must be work at home, in CONUS & OCONUS.

Teamwork is key! We need your ideas, help & support.

NGB/JA POC is Major Erin McMahon, DSN 327-2706, 703 607-2706.

Call with any legal questions!

SA UPDATE - LEGAL ISSUES

Can VWAP materials, programs, & processes be tailored to the new SA response programs?

- **USAF/JA created a DocuShare collection of materials . NGB SAWG is reviewing those and other Army, AF, DOD & DOJ materials.**
- **These materials will have to be reviewed and revised to comply with new policies, such as “Restricted Reporting.”**

INTERNET REFERENCES

- NGB Site: http://www.ngb.army.mil/staff/j1/sapr/
- DoD Site: www.sapr.mil
- Army Site: www.sexualassault.army.mil
- DOJ Site: www.ojp.usdoj.gov/ovc/
- JAG Sites – Check with your JAG about any resources on JAGCNET or FLITE